

5703
RECORDATION NO. _____ Filed & Recorded

JUN 23 1970 - 12:10 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1970

among

RYDAL EQUIPMENT CO.,

C. I. T. CORPORATION

and

READING COMPANY

[Covering 100 Covered Hopper Cars]

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,
12:01 a.m., the Financing Agreement described below has
been assigned to the Consolidated Rail Corporation by the

Trustees of: Reading Company
1 Plymouth Meeting
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease

, dated June 1, 1970 ,

bearing the ICC recordation number (5760)

The payee's name and address is: C.I.T. Corporation
Chemical Bank
Madison Avenue and 59th Street Branch
New York, NY 10022
Special Acct. 116-013117

This Notice of Assignment has been placed in the
file of the ICC recordation number listed above and the entire
assignment is contained in the ICC recordation file stamped
in the margin of this assignment. A copy hereof will be
promptly mailed to the payee listed above for distribution
to the beneficial holder(s) of the Financing Agreement described
in this Notice of Assignment.

Consolidated Rail Corporation

CONDITIONAL SALE AGREEMENT dated as of June 1, 1970, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer as more particularly set forth in Article 27 hereof), C. I. T. CORPORATION, a New York corporation (hereinafter called the Company), acting herein through its agent C. I. T. LEASING CORPORATION, a Delaware corporation, and READING COMPANY, a Pennsylvania corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Company, and the Company agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of

and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation requirements and specifications for new equipment and to all standards, if any, recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Guarantor represents and warrants that: (i) the Equipment will upon delivery to the Company be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code). The Manufacturer, to the best of its knowledge, and the Guarantor represent and warrant that, at the time of the delivery of the Equipment to the Company, the Equipment will not have been used by any person and no amortization or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 31, 1970 (unless such date is extended by the Company, the Guarantor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of

the construction of a unit or a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or authorized representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to the Department of Transportation requirements and are marked in accordance with the provisions of Article 9 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company shall assume with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. Such base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement and the Conditional Sale Agreements referred to in Item 4 of Annex A hereto (hereinafter called the Other Agreements), would, but for the provisions of this sentence, exceed \$2,933,330 (or such higher amount as the

Company may at its option agree to), the Manufacturer, the Company (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion, if any, under the Other Agreements, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreements to not more than \$2,933,330 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Manufacturer and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in not more than three groups of units of the Equipment delivered to and accepted by the Company (each such group being hereinafter called a Group), unless the Company, the Guarantor and the Manufacturer shall otherwise agree. The term "Closing Date" with respect to any Group shall mean such date (not earlier than August 20, 1970 and not later than December 31, 1970), occurring not less than seven business days following presentation by the Manufacturer to the Company and the Guarantor of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Guarantor by written notice delivered to the Manufacturer, the Company and the Vendor at least five business days prior to the Closing Date designated therein; *provided, however*, that the aggregate Invoiced Purchase Prices of units of the Equipment settled for pursuant to this Agreement and the Other Agreements on any Closing Date oc-

curring prior to September 15, 1970, may not exceed \$2,333,333. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 25% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 75% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Other Agreements for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of \$2,200,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreements (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreements, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements; and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate

Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being herein called the Conditional Sale Indebtedness) shall be payable on February 1, 1976, and subsequent instalments shall be payable semiannually thereafter on February 1 and August 1 of each year to and including August 1, 1985 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness was incurred at the rate of $10\frac{3}{4}\%$ per annum and such interest shall be payable, to the extent accrued, on February 1 and August 1 of each year, commencing February 1, 1971 (or if any such date is not a business day on the next succeeding business day). The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company, subject to the provisions of the last paragraph of this Article 3, will pay interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein other than said last paragraph of this Article 3 to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price for each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated the date hereof between the Manufacturer and The First Pennsylvania Banking and Trust Company, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 27 hereof).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of the Equipment is specifically subject to the following conditions:

- (a) the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contem-

plated to be paid by it as provided in the preceding paragraph of this Article 3 and in Section 5 of the Assignment and the documents required by Section 5 of the Assignment shall have been delivered as therein indicated;

(b) no event of default of the Guarantor specified herein nor an Event of Default (as defined in the Lease) of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default or an Event of Default shall have occurred and be continuing;

(c) the Company shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Company may reasonably request; and

(d) the Company and the Guarantor shall have entered into the Other Agreements with the respective parties thereto.

Notwithstanding any other provision of this Agreement, it is understood and agreed by the Vendor that liability of the Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, shall not exceed an amount equal to the income and proceeds from the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 17 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect

of Casualty Occurrences (as hereinafter defined in Article 5 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the Payment Date or the interest payment date next succeeding the date such amounts received by the Company were required to be paid to it pursuant to the Lease; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Company prior to the existence of such an event of default which exceeded the amounts required to pay that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the Payment Date or the interest payment date next succeeding the date on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease. Nothing contained herein shall constitute an assignment of, or lien, charge or encumbrance against, the "income and proceeds from the Equipment" or any right, title or interest of the Company under or arising out of the Lease, or of or against any payments received or to be received by the Company under or in connection with the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to

proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. The Vendor agrees, however, that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Company shall have made all the payments provided for hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such

instruments to the Company at its address specified in Article 23 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 30 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding February 1 or August 1, after February 1, 1971, whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth

the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments will be substantially equal and will fully amortize the unpaid Conditional Sale Indebtedness.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate

original Purchase Price of the Group in which such unit is included.

Although the Guarantor shall not be required to maintain insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any insurance maintained by it upon the units of the Equipment will be made available to the Company and the Vendor, as their interests may appear, to the extent the Guarantor is permitted to do so under such policies of insurance.

ARTICLE 6. *Obligations of Guarantor.* The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof) will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Company in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Company of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable dis-

charge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereon or any other circumstances which might otherwise limit the recourse of the Vendor to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Company or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Company by reason of such payment, to the extent, but only to the extent, that the Company has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in said Article 3, of sums payable by the Company to the Vendor hereunder.

ARTICLE 7. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

ARTICLE 8. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1971, the Company will cause to be furnished to the Vendor, in such number of counterparts as the Vendor may request, an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words "THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, AGENT-OWNER" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not

permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company or the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Company and the Guarantor therein.

ARTICLE 10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts [except gross receipts in the nature of or in lieu of sales taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be levied upon the Equipment or for the use or operation thereof or upon the earnings arising

therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of an invoice therefor.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 12. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however*, that (the Lessee hereby so acknowledging) if and only if the Lessee shall be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and, so long as no such default shall be continuing, the Lessee shall be entitled to possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, trackage or other operating rights, and the Equipment may be used

upon other railroads in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Company agrees not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and agrees that any use of any units of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico. The Company may also lease the Equipment to any other railroad company organized under the laws of any state of the United States of America or the District of Columbia with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the first sentence of this last paragraph of Article 12. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

On this *22nd* day of June, 1970, before me personally appeared *JR GREENE*, to me personally known, who, being by me duly sworn, says that he is Vice President of READING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Arthur H. Williams
 Notary Public

Notary Public for the City of Philadelphia Co.
My Commission Expires January 17, 1974

ANNEX A—RYDAL

- ITEM 1: Rydal Equipment Co., a Pennsylvania corporation.
- ITEM 2: Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107.
- ITEM 3: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be free from defects in material or workmanship or design which may develop under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good any part or parts of any unit of the Equipment which shall be returned to the Manufacturer with transportation charges prepaid within one year after the delivery of such unit to the Guarantor and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warrant of the Manufacturer is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 15 of the Agreement, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

This warranty shall not apply to any component of any unit of the Equipment which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized

service representatives, if, in its judgment, such repair or alterations affect the stability of the Equipment or if the Equipment has been subject to misuse, negligence or accident, nor shall it apply to specialities not of the Manufacturer's own specification or design. The Manufacturer reserves the right to make changes in design or add any improvements on the Equipment at any time without incurring any obligation to install same on equipment previously purchased.

ITEM 4: The two Conditional Sale Agreements dated as of June 1, 1970, among the Company, the Guarantor and United States Railway Equipment Company and International Car Co. Division of International RAMCO, Inc., respectively.

ANNEX B—RYDAL

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
100-ton covered hopper cars	March 13, 1970	Reading, Pennsylvania	100	78650 to 78749	\$15,700	\$1,570,000	June through August 1970 at Reading, Pennsylvania

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

C. I. T. CORPORATION

and

READING COMPANY

Dated as of June 1, 1970

**[Covering 100 Covered Hopper Cars, ⁵⁰~~100~~ Flat Cars
and 10 Cabooses]**

LEASE OF RAILROAD EQUIPMENT, dated as of June 1, 1970, between C. I. T. CORPORATION, a New York corporation (hereinafter called the Lessor), acting herein through its agent C. I. T. LEASING CORPORATION, a Delaware corporation, and READING COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee are entering into three Conditional Sale Agreements each dated as of June 1, 1970 (hereinafter individually called a Conditional Sale Agreement and together called the Conditional Sale Agreements), with RYDAL EQUIPMENT Co., UNITED STATES RAILWAY EQUIPMENT COMPANY and INTERNATIONAL CAR Co., DIVISION OF INTERNATIONAL RAMCO, Inc., respectively (hereinafter individually called a Manufacturer and together the Manufacturers), wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Manufacturers have assigned or will assign their respective interests in the Conditional Sale Agreements to THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to December 31, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter men-

tioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under a Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which and on the date or dates on which such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on the business day next preceding February 1 and August 1 in each year commencing with the business day next preceding February 1, 1971. The first such semiannual payment shall be in an amount equal to .02538% of the Purchase Price (as such term is defined in the Conditional Sale Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the appropriate Conditional Sale Agreement to February 1, 1971;

the next nine such semiannual payments shall each be in an amount equal to 4.56875% of the Purchase Price of each such Unit; and the last 20 such semiannual payments shall each be in an amount equal to 7.03916% of the Purchase Price of each such Unit.

The Lessor hereby agrees to pay to the Vendor the payments required to be paid by it under Article 3 of the Conditional Sale Agreements subject to the conditions precedent and limitations set forth therein and to apply the "income and proceeds from the Equipment" (as that phrase is defined in the Conditional Sale Agreements) received by it hereunder toward the satisfaction of its obligations under the Conditional Sale Agreements.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor in immediately available funds in New York City by depositing such funds to the credit of C. I. T. Corporation, Chemical Bank, Madison Avenue and 59th Street Branch, New York, New York 10022, special account number 116-013117, or at such other place as the Lessor shall specify in writing.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to, or loss of possession or loss of use of, or destruction of, all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due

authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under a Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreements. If an event of default should occur under a Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease or under a Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreements) should be made under a Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under such Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of such Conditional Sale Agreement that it will not

rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the appropriate Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"THE FIRST PENNSYLVANIA BANKING AND TRUST
COMPANY, AGENT-OWNER"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where the Conditional Sale Agreements and this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may

cause the Units to be lettered with the names, initials or insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than any federal, Canadian [Dominion or Provincial] or Mexican income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom

or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 10 of the Conditional Sale Agreements not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease or any extended term thereof, the Lessee shall, promptly after it shall have been determined that such Unit had suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price

of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103%	16	86%
2	103	17	78
3	105	18	78
4	105	19	70
5	106	20	70
6	106	21	61
7	106	22	61
8	106	23	50
9	105	24	50
10	105	25	40
11	100	26	40
12	100	27	30
13	93	28	30
14	93	29	20
15	86	30 and thereafter	20

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before March 1, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor, in such number of counterparts as the Lessor or Vendor may request, an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder and covered by the Conditional Sale Agreements, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units

as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as vendee, under the provisions of Articles 14 and 15 and Item 3 of Annex A of the Conditional Sale Agreements. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any

claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those

created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of, or as the result of, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in §§ 2 or 12 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any of the Conditional Sale Agreements and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreements) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such

appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier ;
or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier ;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof ; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided ; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *22nd* day of June, 1970, before me personally appeared *JR GREENE*, to me personally known, who, being by me duly sworn, says that he is Vice President of READING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Arthur H. Williams
Notary Public

Notary Public for the City of Philadelphia Co.
My Commission Expires January 17, 1974

ANNEX A—RYDAL

- ITEM 1: Rydal Equipment Co., a Pennsylvania corporation.
- ITEM 2: Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107.
- ITEM 3: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be free from defects in material or workmanship or design which may develop under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good any part or parts of any unit of the Equipment which shall be returned to the Manufacturer with transportation charges prepaid within one year after the delivery of such unit to the Guarantor and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warrant of the Manufacturer is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 15 of the Agreement, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

This warranty shall not apply to any component of any unit of the Equipment which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized

service representatives, if, in its judgment, such repair or alterations affect the stability of the Equipment or if the Equipment has been subject to misuse, negligence or accident, nor shall it apply to specialities not of the Manufacturer's own specification or design. The Manufacturer reserves the right to make changes in design or add any improvements on the Equipment at any time without incurring any obligation to install same on equipment previously purchased.

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Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
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ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

C. I. T. CORPORATION

and

READING COMPANY

Dated as of June 1, 1970

**[Covering 100 Covered Hopper Cars, ⁵⁰~~100~~ Flat Cars
and 10 Cabooses]**

LEASE OF RAILROAD EQUIPMENT, dated as of June 1, 1970, between C. I. T. CORPORATION, a New York corporation (hereinafter called the Lessor), acting herein through its agent C. I. T. LEASING CORPORATION, a Delaware corporation, and READING COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee are entering into three Conditional Sale Agreements each dated as of June 1, 1970 (hereinafter individually called a Conditional Sale Agreement and together called the Conditional Sale Agreements), with RYDAL EQUIPMENT Co., UNITED STATES RAILWAY EQUIPMENT COMPANY and INTERNATIONAL CAR Co., DIVISION OF INTERNATIONAL RAMCO, Inc., respectively (hereinafter individually called a Manufacturer and together the Manufacturers), wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Manufacturers have assigned or will assign their respective interests in the Conditional Sale Agreements to THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to December 31, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter men-

tioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under a Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which and on the date or dates on which such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on the business day next preceding February 1 and August 1 in each year commencing with the business day next preceding February 1, 1971. The first such semiannual payment shall be in an amount equal to .02538% of the Purchase Price (as such term is defined in the Conditional Sale Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the appropriate Conditional Sale Agreement to February 1, 1971;

the next nine such semiannual payments shall each be in an amount equal to 4.56875% of the Purchase Price of each such Unit; and the last 20 such semiannual payments shall each be in an amount equal to 7.03916% of the Purchase Price of each such Unit.

The Lessor hereby agrees to pay to the Vendor the payments required to be paid by it under Article 3 of the Conditional Sale Agreements subject to the conditions precedent and limitations set forth therein and to apply the "income and proceeds from the Equipment" (as that phrase is defined in the Conditional Sale Agreements) received by it hereunder toward the satisfaction of its obligations under the Conditional Sale Agreements.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor in immediately available funds in New York City by depositing such funds to the credit of C. I. T. Corporation, Chemical Bank, Madison Avenue and 59th Street Branch, New York, New York 10022, special account number 116-013117, or at such other place as the Lessor shall specify in writing.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to, or loss of possession or loss of use of, or destruction of, all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due

authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under a Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreements. If an event of default should occur under a Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease or under a Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreements) should be made under a Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under such Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of such Conditional Sale Agreement that it will not

rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the appropriate Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"THE FIRST PENNSYLVANIA BANKING AND TRUST
COMPANY, AGENT-OWNER"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where the Conditional Sale Agreements and this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may

cause the Units to be lettered with the names, initials or insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than any federal, Canadian [Dominion or Provincial] or Mexican income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom

or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 10 of the Conditional Sale Agreements not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease or any extended term thereof, the Lessee shall, promptly after it shall have been determined that such Unit had suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price

of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103%	16	86%
2	103	17	78
3	105	18	78
4	105	19	70
5	106	20	70
6	106	21	61
7	106	22	61
8	106	23	50
9	105	24	50
10	105	25	40
11	100	26	40
12	100	27	30
13	93	28	30
14	93	29	20
15	86	30 and thereafter	20

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before March 1, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor, in such number of counterparts as the Lessor or Vendor may request, an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder and covered by the Conditional Sale Agreements, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units

as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as vendee, under the provisions of Articles 14 and 15 and Item 3 of Annex A of the Conditional Sale Agreements. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any

claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those

created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of, or as the result of, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in §§ 2 or 12 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any of the Conditional Sale Agreements and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreements) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such

appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier ;
or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier ;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof ; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided ; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free

from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 8.247% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision hereof, shall be equal to such sum as, in the reasonable

opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment which was lost, not claimed, not available for claim or disallowed in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, **any action or inaction** by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall

forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

C. transport the same to any place on the lines of railroad operated by it or any of its subsidiaries or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Unless the Lessee otherwise consents, from and after any such assignment, all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of The First Pennsylvania Banking and Trust Company (or to any assignee of said Bank made pursuant to Section 6 of the Agreement and Assignment between the Manufacturer and said Bank dated as of June 1, 1970, under which the Conditional Sale Agreement is being assigned to said Bank) with instructions to apply all such rentals and other payments forthwith to the satisfaction of the obligations of the Lessor under the Conditional Sale Agreements accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, except, however, for any rights in and to the Lessee's interest in this Lease which

may accrue to the Manufacturers Hanover Trust Company (hereinafter called the Mortgagee), as successor to the Central Union Trust Company as mortgagee under a Mortgage and Deed of Trust dated January 2, 1924, between the Lessee and the Mortgagee, as amended and supplemented. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units and other than the lien of the said Mortgage and Deed of Trust) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possessions of the Units to

any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease, (i) it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America, (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada, and (iii) it will not make or permit any use of a Unit which shall result in such Unit failing to qualify as "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for three five-year periods commencing on the scheduled expiration of the original term of this Lease, provided that no such extended term shall extend beyond August 1, 2000, at a rental payable in 10 semi-annual payments, in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 3.020% ;

during the second five-year period, 2.011%; and during the final five-year period, 1.510%; such semiannual payments to be made on the business day next preceding February 1, and August 1 in each year of the applicable extended term and (b) to purchase all, but not fewer than all, of such Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless all liability arising in respect

of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the original or any extended term of this Lease.

§ 14. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local

government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. neither the lien of the Mortgage and Deed of Trust dated January 2, 1924, referred to in § 11 hereof, nor any other mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 15. *Opinion of Tax Counsel.* On or before the first Closing Date occurring under each Conditional Sale Agreement, the Lessor, as a condition to its obligation to lease the units to the Lessee hereunder, shall have received counterparts of the written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, com-

puted in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended to the date hereof, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Internal Revenue Code of 1954, as amended to the date hereof), as provided for in said Section 184, whichever the Lessor elects.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreements and any assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and deposit and refile, re-recording and redeposit required of the Lessor under Article 21 of the Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreements or any assignment thereof; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or deposit, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The

Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 11% per annum of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 650 Madison Avenue, New York, New York 10022, *attention of* the President;

if to the Lessee, at Office of Secretary, Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 10197;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this

Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, Although this Lease is dated as of June 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

C. I. T. CORPORATION
by C. I. T. LEASING CORPORATION,
as Agent,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

READING COMPANY,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of June, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of C. I. T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this day of June, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of READING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Time and Place of Delivery</u>
100-ton Covered Hopper Cars	100	78650 to 78749	\$15,700.00	\$1,570,000.00	June through August 1970 at Reading, Pennsylvania
100-ton Coil Steel Flat Cars	50	88154 94100	18,704.00	935,200.00	July and August 1970 at Blue Island, Illinois
Cabooses	10	9199 94100 94100 to 94109	25,739.41	257,394.10	August, 1970 at Reading, Pennsylvania